

the purchase of a station at a reduced price would not be addressed in the allotment proceeding but would be addressed in the licensing process following conclusion of the allotment proceeding. In the Detroit Lakes case, the Commission held that allegations that a petitioning party's acquisition of the construction permit for the allotment in question would result in a violation of the multiple ownership rules similarly would be addressed in the licensing process rather than the allotment proceeding; Mr. Doyle's letter at page 3, fn. 10, is to a similar effect.

37. None of these collateral issues had a bearing on the Section 307(b) public interest factors to be considered, e.g., gains or losses in service area, other services available to gain or loss areas, "white" areas, "gray" areas, first local service, removing the only local station from a community, and so on. Here, we are not raising any such collateral issues, including a multiple ownership issue and the suggestion that we may be is an unsupportable reach in the Bureau Reconsideration Decision. Here, we are directly raising issues regarding the contamination of the 307(b) public interest factor of first local service in the counterproposal accepted and adopted in the Bureau's two decisions below.

VI.

The meritorious allotment to Vinton providing
a first local radio service for a rural area
should be favored in this proceeding

38. The Commission's FM allotment program in very substantial nature is about "numbers." In cases of a contest

over preference for providing a first local radio service, the ultimate choice boils down to the numbers, often by very thin margins. The argument here fixes on the population of Vinton (3,338). If Tichenor were to play the cards in its present hand, Winnie (2,914) would be the loser, as would Crystal Beach (787). Hence the shell game in an effort to ratchet the population above Vinton's population.

39. In population coverage comparisons that often figure into allotment decisions, the process also is a game of numbers. For example, in the subject case, if there were no disposition of the allotment based on first local service, the choice could come down to the gain of some 270,000 people served by Tichenor vs. the population within the service area of a Class A station in a small town in rural Louisiana, obviously a fraction of the Tichenor figure. In the Quanah proceeding involving allotments for Dallas-Fort Worth, San Antonio and Austin, Texas, the gross coverage figure is huge, i.e., 4.3 million population.

40. When it comes to numbers, cities fare better than rural communities and areas because there are more people there. Not because those people are more important than people in rural communities and areas, or have greater broadcast needs or have more significant issues in their lives. There are just simply more of them. As a result, in the numbers-driven allotment program, spectrum space has been and is being siphoned off to the cities and has been and is being withdrawn from use in the rural areas.

41. Mr. Crawford, a radio advertising executive by trade with offices in Dallas, and like minded colleagues believe that there is a future in rural radio and that it is important to act now to counterbalance the continued erosion of the available spectrum. For that reason, they have filed a substantial number of FM allotment petitions, all for small communities in or near rural areas. The Commission itself has recently shown signs of concern for rural areas. See, e.g., News Release, dated August 6, 2003, entitled FCC Commences Land of Opportunity Initiative for Rural America, Access to Affordable and Quality Telecommunications Services in Rural America; News Release, dated July 2, 2003, entitled FCC and United States Department of Agriculture Hold Kick-off Meeting of the "Federal Rural Wireless Outreach Initiative"; News Release, dated May 8, 2003, entitled FCC Acts to Enhance Rural Participation in Spectrum Auctions.

42. The Commission's Memorandum Opinion and Order regarding Modification of FM and TV Authorizations to Specify a New Community of License, 5 FCC Rcd 7094, 7096, 7099 (1990), stating with regard to "other public interest matters" to be considered under Section 307(b), "...it is proper for the Commission to consider whether a proposal would result in shifting of service from an underserved rural to a well-served urban area and the public interest consequences of any such change." citing Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 92 (1988). While this policy historically has been applied to removal of an existing service to rural areas, the intent of the

policy would be served by rejecting the cynical shell game employed here to deny a meritorious new rural service in order to add service to an exceedingly well served urban area.

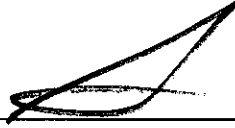
43. In Albemarle and Indian Trail, North Carolina, Memorandum Opinion and Order, released May 20, 2004 in MM Docket No. 99-240, the Statement of Commissioner Kevin J. Martin has direct application to the allotment for Vinton sought here: "Local radio stations play an important role in their communities, providing local news, information and entertainment to residents, and generally serving as good corporate citizens in local community life. This is particularly true in smaller towns, where the radio stations are limited in number. Yet there are still rural areas of our country that do not have even one local radio station. As a native of this part of North Carolina, I am therefore particularly pleased to approve the first local broadcast radio service in Indian Trail. I hope this new station serves the community well."

CONCLUSION

44. For the foregoing reasons, the Bureau action should be reversed, the allotments relative to Crystal Beach, Lumberton and

Winnie, Texas should be reversed, and the allotment to Vinton, Louisiana, should be granted.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Gene A. Bechtel', is written over a horizontal line.

Gene A. Bechtel

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Counsel for Charles Crawford

December 20, 2004

EXHIBIT 1

Coverage maps of Tichenor stations

radio-locator

formerly the MIT List of Radio Stations on the Internet

find US radio stations by location
city/zip state

find by call letters

WINNER

If flashing, you've been selected!

KOBT-FM 100.7 MHz

Winnie, Texas

Station Owner:

Tichenor License Corporation ("Tlc")

[find stations owned by Tichenor License Corporation \("Tlc"\)](#)

this feature is only available to Gold Customers

Station Format: Spanish

[tell me about "Spanish" stations](#)

[find more Spanish stations](#)

Website: none

Audio Feed: none

Station Address:

3102 Oak Lawn

Suite 215

Dallas, TX 75219

KOBT-FM Technical Info:

Station Status Licensed Class C FM Station

Area of Coverage [View Coverage](#)

Effective Radiated Power 100,000 Watts

Height above Avg. Terrain 595 meters

Height above Sea Level 609 meters

Antenna Pattern Non-Directional

Transmitter Location 30° 3' 5" N., 94° 31' 37" W.

License Granted April 04 1997

License Expires August 01 2005

Last FCC Update April 04 1997

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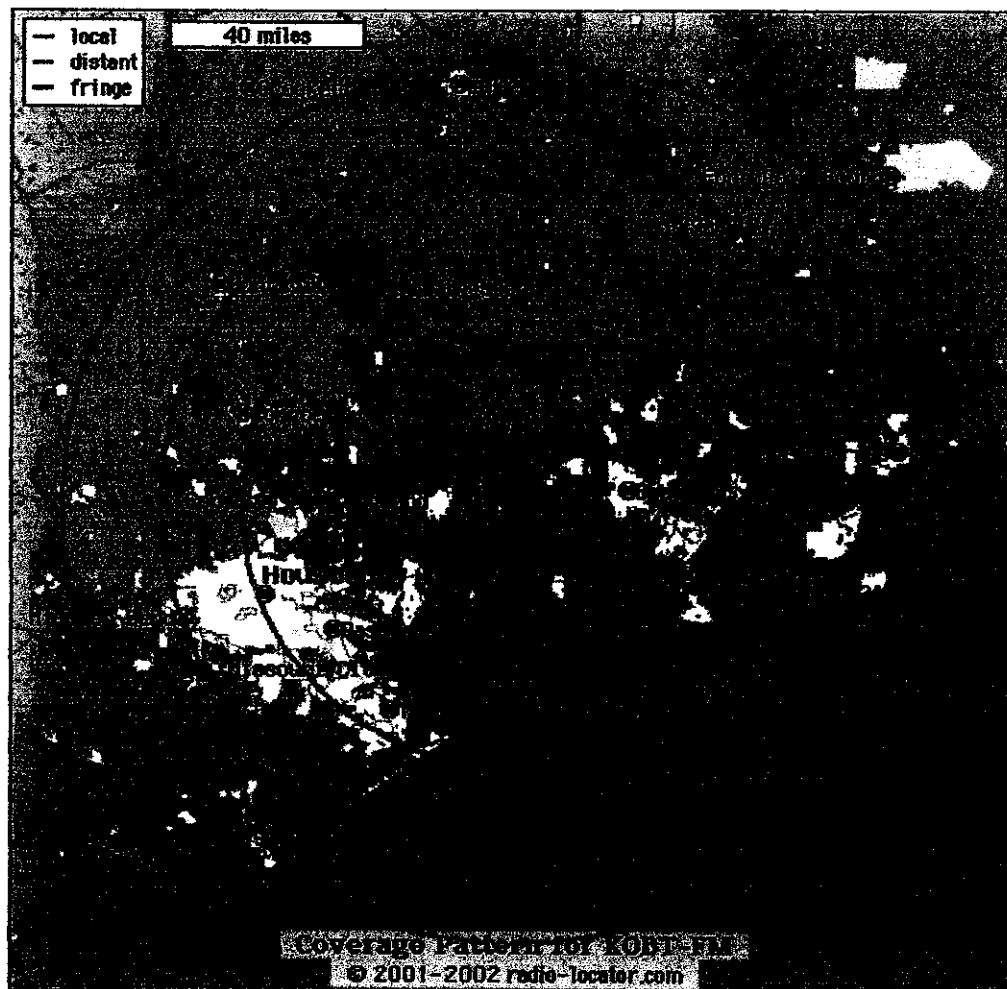
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Predicted coverage pattern for KOBT 100.7 FM, Winnie, TX



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city/zip state go go

WINNER**If flashing, you've been selected!****KQBU-FM 93.3 MHz**

Port Arthur, Texas

Station Owner:

Tichenor License Corporation ("Tlc")

[find stations owned by Tichenor License Corporation \("Tlc"\)](#)

this feature is only available to Gold Customers

Station Format: Spanish[tell me about "Spanish" stations](#)[find more Spanish stations](#)**Website:**<http://www.netmto.com/radio/kqbu/>**Audio Feed: none****Station Address:**

3102 Oak Lawn Ave.

Suite 215

Dallas, TX 75219

KQBU-FM Technical Info:

Station Status Licensed Class C FM Station

Area of Coverage [View Coverage](#)

Effective Radiated Power 97,000 Watts

Height above Avg. Terrain 595 meters

Height above Sea Level 609 meters

Antenna Pattern Non-Directional

Transmitter Location 30° 3' 5" N., 94° 31' 37" W.

License Granted September 13 1996

License Expires August 01 2005

Last FCC Update September 13 1996

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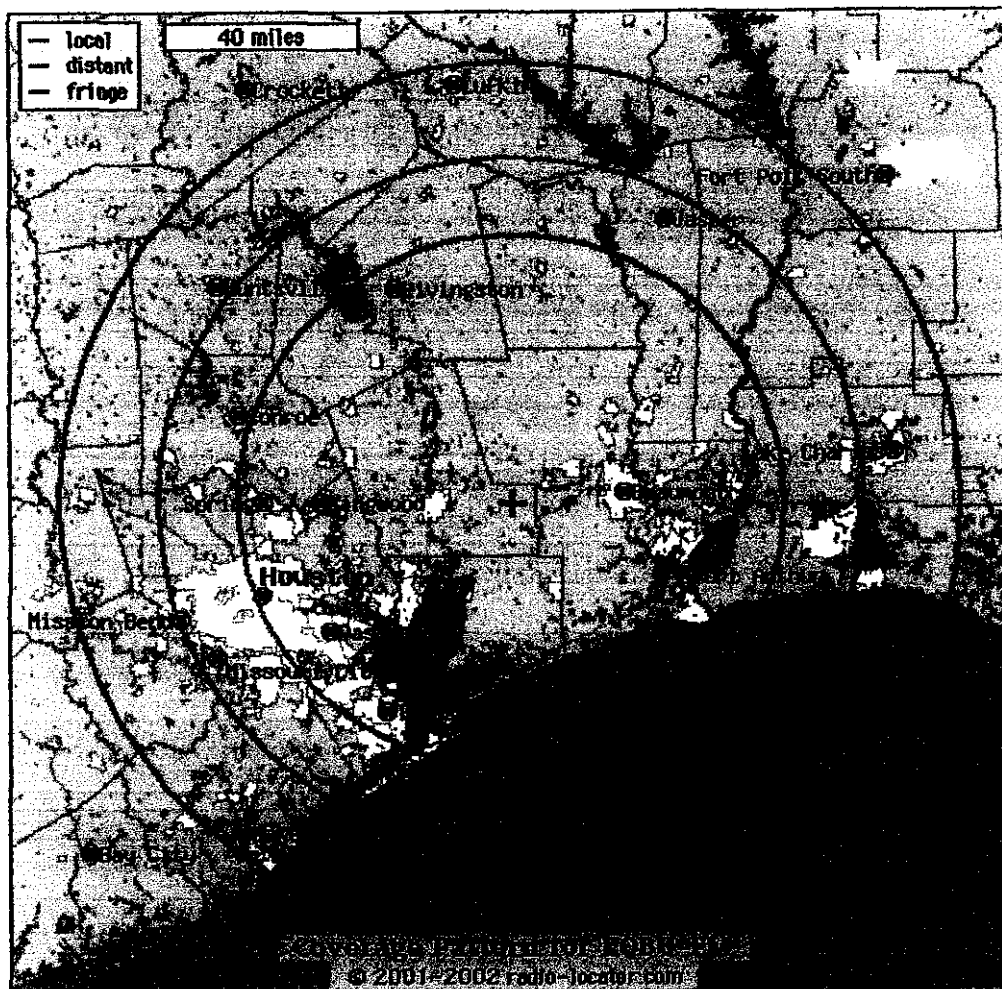
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to listen to when you get there?
Take Radio-Locator with you!**



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Predicted coverage pattern for KQBU 93.3 FM, Port Arthur, TX



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EXHIBIT 2

Sovereignty Study of State Department
1931-1932, pp. 145-146

"not within the lawful jurisdiction of any other government" shall be occupied by American citizens. The discoverer of guano was to make such assertion, under oath. This assertion was made as to the Swan Islands, and a certificate, based in part thereon, was issued. If the jurisdiction, or claim of jurisdiction, of another State had been advanced the certificate would have been refused. The Cayo Verde Case, cited above, is illustrative. The mere issuance of a certificate, based upon the represented state of facts, cannot modify or alter the true facts. It would seem to follow that the Swan Islands, dominion over which was in Honduras, were not of that class of islands contemplated in the Act.

The same section provides that islands so possessed may be considered at the discretion of the President "as appertaining to the United States". The use of the word "appertain" is deff, since it carries no exact meaning and lends itself readily to circumstance and the wishes of those using it. It has given rise to such words as "appurtenant" and "appurtenance". The common law denies that land can be appurtenant to land. In a strict sense an island cannot be appurtenant to other territorial possessions. If the word "appertain" and its variants cannot be given a strict meaning they lose what little value they have when relied upon for the creation or

assertion

assertion of legal rights. The meaning of the Act must be found outside the phrase quoted above.

Section 1418 authorizes the President "at his discretion, to employ the land and naval forces of the United States to protect the rights of the discoverer..." If, upon occupation under the Guano Act, the islands were to become a part of the domain of the United States such authorization would be unnecessary. Further, the President probably would not have received discretionary power.

Section 1419 provides that nothing in the Act "shall be construed as obliging the United States to retain possession of the islands" after the removal of guano. If the word "possession" was used in a strict sense it follows that a mere temporary occupation, for a fixed purpose, was contemplated. Of course, possession could be retained. But it is doubtful if the Act contemplated such occupation as would give rise to the right of sovereignty.

Section 1412 stipulates that a discoverer shall show, inter alia, that "possession was taken in the name of the United States...". This condition was included in the Attorney General's opinion of June 2, 1857. As shown above, several certificates recited that occupation was taken in the name of the United States; the Swan Islands certificate did not. But it is my opinion that

CERTIFICATE OF SERVICE

I certify that on this 20th day of December, 2004, I have caused copies of the foregoing APPLICATION FOR REVIEW to be placed in the United States mails, first class, postage prepaid, to the following counsel for Tichenor License Corporation:

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A handwritten signature in black ink, appearing to read 'Gene A. Bechtel', is written over a horizontal line.

Gene A. Bechtel